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RICHARD W. WICKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

-FILING

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Attorney for Plaintiff
ALISON DAVI, a Minor, by and through her
General Guardian, GIOLARMA DAVI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CIPR

ALISON DAVI, a Minor, by and through
her General Guardian, GIOLARMA DAVI,

CIVIL ACTION
CASE NO.:

Plaintiff,

C08 04095 PVT

v.

COMPLAINT

CITY OF SEASIDE, CALIFORNIA,
KEVIN MILLER and DOES 1 through 25,
inclusive,

Defendants.

Plaintiff, ALISON DAVI, a Minor, by and through her General Guardian, GIOLARMA
DAVI, hereby alleges:

COMPLAINT

Plaintiff, ALISON DAVI, a Minor, by and through her General Guardian, GIOLARMA
DAVI, by her attorney, Robert D. Ponce, Law Offices of Robert D. Ponce, claims of defendant,
CITY OF SEASIDE, CALIFORNIA a sum in excess of \$50,000.00, and in support thereof, states
the following:

A. JURISDICTION AND VENUE

1. The United States District Court for the Northern District of California, San Jose

1 Division, has jurisdiction over this action pursuant to 42 U.S.C. §1983.

2 2. Venue lies in the Northern District of California pursuant to 28 U.S.C. §1402(b)
3 and 28 U.S.C. §2675(a) in that the events giving rise to this claim occurred within the Northern
4 District of California. This action is filed in the San Jose Division of the Northern District of
5 California because the acts complained of herein occurred within the County of Monterey,
6 California.

7 **B. THE PARTIES**

8 3. Plaintiff ALISON DAVI, is a Minor, currently 16 years of age, having a birth
9 date of March 29, 1992. GIOLARMA DAVI is an adult relative of ALISON DAVI (Aunt) and
10 represents the interests of ALISON DAVI as her General Guardian. GIOLARMA DAVI was
11 appointed Guardian ad Litem to protect the interests of ALISON DAVI in a related State Court
12 proceeding, *Davi, a Minor, by and through her Guardian ad Litem, Giolarma Davi, plaintiff vs.*
13 *City of Seaside, California and DOES 1 through 25, inclusive*, Monterey County Superior Court
14 Action Case No.: M 84655.

15 4. Defendant CITY OF SEASIDE, CALIFORNIA was and is a public entity
16 and/or governing body lawfully formed in and of the State of California.

17 5. Defendant KEVIN MILLER was at all times herein mentioned a police officer
18 acting on behalf of defendant CITY OF SEASIDE, CALIFORNIA. During the acts complained
19 of herein, defendant KEVIN MILLER acted on behalf of defendant CITY OF SEASIDE,
20 CALIFORNIA and under color of law.

21 6. Plaintiff ALISON DAVI, a Minor, is the surviving daughter of Eldon Davi, who
22 died on August 29, 2006. This action alleges wrongful conduct on the part of defendant CITY
23 OF SEASIDE, CALIFORNIA, which led to the death of Eldon Davi.

24 7. The true names or capacities, whether individual, corporate, associate or
25 otherwise, of defendants DOES 1 through 25, inclusive, are not now known to or ascertainable
26 by plaintiff, and plaintiff prays leave of Court to amend this complaint to insert their true names
27 and capacities when the same are ascertained. Plaintiff is informed and believes, and on such
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1 information and belief alleges that each of the defendants designated herein was negligently
2 responsible in some manner for the events and happenings herein referred to, and negligently
3 caused injury and damages proximately thereby to plaintiff, as herein alleged.

4 8. At all times herein mentioned, each defendant was the agent, servant and
5 employee of each of the remaining defendants, and was acting in the scope of his or her
6 employment as such agent, servant and employee.

7 C. FACTUAL BACKGROUND

8 9. The facts complained of herein occurred on or about August 29, 2006. On said
9 date, at approximately 5:46 A.M., Eldon Davi was struck while a pedestrian upon a public street,
10 Casanova Street, located within the City of Monterey, California. Prior to being struck by said
11 motor vehicle, Davi was incarcerated at the Seaside Police Department. He had been arrested on
12 the previous evening (August 28, 2006) for driving under the influence of alcohol. At the time, a
13 field sobriety test verified that Davi was sufficiently intoxicated to warrant arrest. While under
14 the custody of the Seaside Police Department, Davi was administered blood alcohol tests, which
15 were performed at 11:05 PM and yielded results of .35, 38 and .41 alcohol content.

16 10. Six hours and fifteen minutes later, and without the benefit of another blood
17 alcohol test, Seaside Police officers released Eldon Davi at 5:20 A.M. At the time of his release,
18 Davi remained extremely intoxicated. Police officers returned Davi's personal items, including
19 car keys at the time of his release. It is believed that Davi was returning to his automobile when
20 the accident occurred. Twenty-six minutes after his release, Davi was injured by said motor
21 vehicle.

22 11. Davi was transported to the Community Hospital of the Monterey Peninsula,
23 where he died, later that day, of his injuries, at 7:28 P.M. A toxicology analysis performed at the
24 hospital revealed that Davi's blood alcohol level remained at .29 grams.

25 12. Davi remained seriously impaired due to intoxication when he was released by
26 CITY OF SEASIDE, CALIFORNIA police.

27 13. Defendant KEVIN MILLER, acting behalf of defendant, CITY OF
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1 SEASIDE, CALIFORNIA and DOES 1 through 5, and each of them, acted with deliberate
2 indifference in violation of 42 U.S.C. §1983, when he released Eldon Davi at a time when he was
3 a danger to himself. As a proximate result of the acts of defendant CITY OF SEASIDE,
4 CALIFORNIA and DOES 1 through 25, and each of them, Eldon Davi died.

5 14. Prior to the death of decedent Eldon Davi, plaintiff lived with decedent and/or was
6 dependent on him for support and maintenance. At the time prior to his death, decedent was a
7 faithful and dutiful father to plaintiff ALISON DAVI.

8 15. As a proximate result of the wrongful acts of defendants, and each of them, and of
9 the death of decedent, Eldon Davi, plaintiff has sustained pecuniary loss resulting from the loss
10 of society, comfort, attention, services and support of decedent.

11 16. As a further proximate result of the negligence of defendants, and each of them,
12 and of the death of decedent, Eldon Davi, plaintiff has incurred financial and burial expenses.

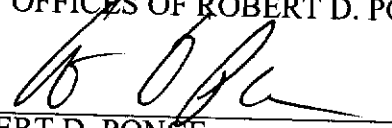
13 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as
14 follows:

- 15 1. General damages according to proof;
16 2. For funeral and burial expenses for Eldon Davi according to proof;
17 3. For interest on all economic damages in the legal amount from August 29, 2006 to
18 the date of judgment;
19 4. For costs of suit herein and
20 5. For such other and further relief as the Court may deem just and proper.

21 DATED: August 26, 2008

LAW OFFICES OF ROBERT D. PONCE

22
23 By:


24 ROBERT D. PONCE
Attorney for Plaintiff

25 DAVIFEDCOM
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27
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JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

ALISON DAVI, a Minor, and through her General Guardian,
GIOLARMA DAVI

(b) County of Residence of First Listed Plaintiff MONTEREY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

ROBERT D. PONCE (SB# 08055)
LAW OFFICES OF ROBERT D. PONCE
787 Munras Avenue, Suite 200, Monterey, CA 93940
Telephone: (831) 649-0515

DEFENDANTS

CITY OF SEASIDE, CALIFORNIA, KEVIN MILLER and
DOES 1 through 25, inclusive

County of Residence of First Listed Defendant MONTEREY
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

C08 04095

PVT

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input checked="" type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	Habeas Corpus:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983

Brief description of cause:

Deliberate indifference in releasing plaintiff's father when intoxicated, causing his death.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$

CHECK YES only if demanded in complaint:

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

JURY DEMAND: ☐ Yes ☒ No

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

SIGNATURE OF ATTORNEY OF RECORD

DATE
August 26, 2008

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.